

ID: CCA_2009060308440350

Number: **200930039**

Release Date: 7/24/2009

Office:

UILC: 4975.00-00

From:

Sent: Wednesday, June 03, 2009 8:49 AM

To:

Cc:

Subject: Section 4975 case

To give you a heads up I asked DOL about the facts in this case and I was told the following:
"Informally, it seems to us that unless the fiduciary needed the plan investment in the mutual fund to carry out his scheme, (e.g. he relied on the plans investment to complete a transaction he couldn't do alone in his personal capacity) there's not a PT. But, it definitely would be a 404 violation to get the plan involved in an illegal scheme, and the fiduciary would be liable to the plan under section 409 of ERISA for any losses the plan suffered as a result, i.e., the penalties and disgorgement."

DOL issued a Field Assistance Bulletin on the allocation of the proceeds of SEC settlements with mutual fund - it did not deal with your issue however. See the attached DOL Field Assistance Bulletin 2006-01 (April 19, 2006).

The violation that DOL's mentions are fiduciary breaches and would be under the jurisdiction of DOL. I would recommend referring to the case to the DOL field office especially if the taxpayer's company was involved in the handling of other qualified plans.

If you want to talk further you can call us when you get in. My telephone number is
and phone number is .